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MARCH 1996

HELENA, MONTANA

VOL. X NO. 10

LEGISLATOR PER DIEM PAYMENTS -- TAX CONSIDERATIONS

This information is intended to assist legislators and their tax preparers in handling legislative per diem payments. Legislators should consult with their income tax preparers for specific requirements relating to individual circumstances.

General Rules

All legislator per diem payments made to legislators living more than 50 miles from the Capitol building are reimbursements made under an accountable plan; are not taxable income of the legislator; and are not subject to withholding or reporting. The difference between the per diem paid and the amount allowed by federal law for reimbursement is treated as unreimbursed expenses and, subject to certain limitations, is allowed as a miscellaneous items deduction by the legislator.

Legislator per diem payments made to legislators who do not live in Helena but who live within 50 miles of the Capitol building are not substantiated reimbursements and are thus reported as income. Withholding is made against these payments. All legislative lodging and meal expenses actually incurred by the legislator are unreimbursed expenses and, subject to certain limitations, may be a miscellaneous items deduction by the legislator.

Legislator per diem payments made to legislators who reside in Helena are reported as income and are subject to withholding. The legislator may not claim meal and lodging expenses incurred in Helena.

PLEASE RETURN

Accountable Plan

All legislator per diem payments made to a legislator whose home is more than 50 miles from the Capitol building are employee reimbursements under an accountable plan for the following reasons:

- (1) IRC section 162(h) eliminates requirements for a legislator to substantiate an overnight stay.
- (2) The per diem payment to legislators is \$50 per legislative day (5-2-301(3), MCA). Federal law provides one type of accountable plan for when the employee's "lodging plus meals and incidental expenses" per diem reimbursement is less than the amount computed for the federal per diem rate. (IRC section 62(a)(1)(A), 26 CFR 1.62-2) For Montana, the applicable reimbursement rate, set forth in 41 CFR Ch. 301 App. A, is \$70--\$44 for lodging and \$26 for meals and incidental expenses.

Reimbursements paid "under an accountable plan are excluded from the employee's gross income; are not reported as wages or other compensation on the employee's Form W-2; and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA)...)". (26 CFR 1.62-2(c)(4)). Therefore, all legislators living more than 50 miles from the Capitol building do not have their per diem payments reported on their W-2 Form.

Under 26 USC 162(h)(4), the special provisions allowing use of the federal per diem rate do not apply to legislators living within 50 miles of the Capitol building. Therefore, those legislators must follow the provisions of 26 USC 274(d); must specifically substantiate all lodging and meal expenses; and cannot take advantage of unreimbursed expenses set forth below. Because 26 USC 274(d) requires out-of-town travel before a person can claim lodging and meal expenses, a legislator who lives in Helena cannot claim any meal or travel expenses for session activities occurring within Helena.

Unreimbursed Expenses

All legislators who live more than 50 miles from the Capitol building are considered to have substantiated expenses equal to \$70 a day, but they receive only \$50 in per diem payments. Under 26 CFR 1.62-1T(e)(4), the legislator is allowed as a deduction a portion of this unreimbursed expense. The amount of the deduction is determined as follows:

- (1) The \$20 difference must be allocated between lodging and meals in the same ratio as is set forth in the schedule in 41 CFR Ch. 301 App. A, after subtracting \$2 (the amount allocated to incidental expenses) from the meals and incidental expenses amount. The ratio of \$44/\$24 is 65%/35%. Thus, of the \$20, \$13 is allocated to unreimbursed lodging expenses and \$7 to unreimbursed meal expenses.
- (2) All of the \$13 lodging expense and 50% of the \$7 meal expense (see 26 USC 274(n)) are deductible, subject to the 2% floor on miscellaneous itemized deductions of 26 USC 67.

A qualifying legislator may receive per diem allowable travel reimbursement for each legislative day, as defined in 26 USC 167(h)(2). A legislative day is each day that the legislature was in session, including any day on which the legislature was not in session for a period of 4 consecutive days or less or any day when it was not in session but the physical presence of the legislator was formally recorded at a meeting of a committee of the legislature. During 1995, the Legislature was in session for 102 days that met the federal definition of a "legislative day". Per diem is paid for committee members' attendance at committee meetings held during the interim. Days in Helena on legislative business for which no per diem was paid are totally unreimbursed travel expense days and may be deducted as provided as above, except that the base amounts are the daily allowable total of \$44 for lodging and \$26 for meals and incidental expenses.

COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

Committee Holds Second Meeting...The Committee on Public Employee Retirement Systems conducted its second meeting on February 23, receiving information and discussing issues related to fiscal and policy principles, investment of pension funds, the state's deferred compensation and 403(b) plans, private-sector pension plans, and a comparison of public and private pension plans.

Committee Hears From Actuary...Mr. Alton Hendrickson, the actuary for eight of the statewide public retirement plans and for a large proportion of Montana's private-sector plans, provided an overview of

actuarial valuations, the impact of legislation on a system's unfunded liabilities, and cost-of-living adjustments.

Mr. Hendrickson explained the basics of an actuarial valuation and how a valuation looks at normal costs, benefit obligations, and system assets to ensure that the retirement plan is adequately funded to provide for past, present, and future benefit obligations. He also explained how a legislatively approved benefit enhancement that covers not only future service but also past service creates a benefit obligation or liability that has not been prefunded.

Addressing cost-of-living adjustments, Mr. Hendrickson expressed his opinion that because the Legislature does grant ad hoc cost-of-living adjustments and there is a recognized need for retirees to get some benefit increases to help keep benefits from serious erosion, it would be prudent for the Legislature to provide an automatic increase that could be prefunded by employee and employer contributions. He explained that the longer the Legislature waits to enact an automatic increase, the more expensive cost-of-living adjustments will become, because each year there are more retirees on the systems' roles who are no longer able to contribute toward system benefits.

Committee Adopts Retirement Principles...Following Mr. Hendrickson's presentation, the Committee discussed what principles should be adopted to help guide legislative retirement policy decisionmaking. This session began with a round-robin brainstorming exercise led by staff to identify the priority concerns of each of the Committee members. The following paraphrases the list of concerns raised during that exercise:

- The Legislature should strive to ensure that the cost of funding benefits remains a contemporary obligation, i.e., that costs not be passed to future generations.
- Individual responsibility should be more a part of public retirement philosophy.
- The state should not be providing a public pension plan at all but should allow individual employees to have the money and the responsibility for their own retirement planning.
- Workers need to be better educated about retirement planning so that individual choices are smart choices.
- The Committee should not lose sight of the fact that putting money away for future retirement is not the priority financial concern of many workers who are struggling just to make ends meet in the present.

- A retirement policy should not revert to the "old days" when retirees who could no longer work ended up living in poverty or on public assistance because they did not have even a basic retirement income.
- Retirement policy needs to adapt to the changing needs and expectations of the public workforce.
- Policy considerations need to address disparities among the different statewide systems so that benefits are equitable and designed with a long-term view to prevent "leapfrogging" among the different retirement systems.
- Issues of portability should be considered.
- Policy guidelines should help prevent the legislative session stresses and frictions caused when retirees request ad hoc cost-of-living increases.
- In discussing retirement policy, the Committee realizes that everything costs money; and that there are always costs that someone has to pay.

After this discussion, the Committee adopted the following three basic retirement principles, which had also been adopted by the previous interim retirement committee:

1. Pension funding should be a contemporary obligation.
2. Pension investments should be governed by the "prudent expert rule".
3. Pension benefits should be equitably allocated among beneficiaries.

After considerable debate on the purpose of a public pension plan, the Committee postponed until the beginning of its next meeting on June 7 a vote on the following draft language of a fourth principle:

4. Pension benefits should provide a base for financial security in retirement.

Committee Hears From Other Experts...In other business, the Committee heard from Board of Investments Executive Director Carroll South and Investment Officer Jim Penner about public pension investment management and earnings. Mr. Jim Turcotte of D.A.D.-Benefits provided an overview of the state's deferred compensation and 403(b) plans. Finally, Mr. John Bebee, vice president of D.A.D. Co.-Trust Corp.,

provided an overview of the administrative roles required in the management of all retirement plans. The following types of private-sector defined contribution plans were also reviewed: individual retirement accounts (IRAs); SEP-IRAs; money purchase pensions; profit-sharing plans; cash or deferred 401(k) profit sharing; and employee stock ownership plans (ESOPs). Mr. Bebee also briefly reviewed defined benefit plans.

Staff Reports on Defined Contribution Plans...Staff provided a report comparing public and private worker participation and benefits under defined contribution plans. The report, based on research provided by the U.S. Bureau of Labor Statistics, showed that many private workers in defined benefit plans are also covered by a defined contribution plan and that a defined benefit plan in the private sector is generally an entirely employer-paid supplement to a private worker's primary plan. Thus, the public-sector defined benefit plan, which is usually the only retirement plan in which the public employer participates, is likely to provide better benefits than a private-sector defined benefit plan.

Committee Discusses Analysis of Retirement Proposals...After reviewing the questions raised by the previous interim retirement committee as a basis for staff analysis of submitted retirement proposals, the Committee requested the following two additional questions be considered:

1. Is the proposal, as a whole, good retirement policy?
2. Does the proposal appropriately consider changing workforce dynamics with respect to career expectations and current and projected workforce trends?

Committee Seeks More Information...The Committee asked for more information in the following areas:

- health care costs for public retirees;
- the development of three models (options) for how a defined contribution plan could be structured for public employees in Montana;
- more data comparing public pension benefits and salaries in Montana to pensions and salaries in other states; and
- what a retiree's benefit would be after 20 years, 25 years, 30 years, 35 years, and 40 years in TRS and PERS if an 8% employer contribution were made (or the equivalent of what Social Security contributions are now). (Senator Emerson)

Committee to Meet in June...The next meeting of the Committee on Public Employee Retirement Systems will be held on June 7, beginning at 8 a.m. in Room 104 of the State Capitol. The meeting's primary purpose is for the presentation and public hearing of proposals being submitted to the Committee for review and recommendation to the 1997 Legislature.

The Committee will also discuss potential Committee bills, including repealing the June 30, 1997, sunset provision on and other amendments to the statutes establishing the Committee (Title 5, chapter 21, MCA).

For more information, please contact Sheri Heffelfinger, Legislative Services Division, (406)444-3064.

ADMINISTRATIVE CODE COMMITTEE

Action at February 23 Meeting...At its February 23 meeting (the first of the interim), the Administrative Code Committee elected Representative Marge Fisher as Chairwoman and Senator Terry Klampe as Vice Chairman.

The Committee decided that ARM 16.16.110 (as is read prior to a 1984 amendment), providing, among other things, that a subdivision will not be approved by the state unless "the water supply is adequate", should not have been used by the state to deny approval (unless the subdividers agreed to install holding tanks for water as well as to install wells) of a subdivision for which the state had determined that the ground water supply was adequate, but would run out in the future. In 1984, the rule was amended to substitute "will be adequate" for "is adequate".

The Committee also heard a claim by dental hygienists and other persons that numerous rules that were recently adopted by the Board of Dentistry and that regulate dental assistants and to some extent dental hygienists, contained numerous serious violations of MAPA (the Montana Administrative Procedure Act) and were in conflict with the statutes the rules relate to and implement. As to each of the five specific claims of alleged violation, the Committee voted in favor of the Board.

LEGISLATIVE SERVICES DIVISION

LEGAL SERVICES OFFICE

Ballot measures received:

- Clean Water and Public Health Protection (France)
- Pop Tax - Elder Trust Fund (Havskjold)
- State Court Auditor (Birkholz)

Note: Pursuant to 13-27-202(2), MCA, copies of correspondence regarding the proposed ballot measures are available through the Secretary of State, (406)444-2034.

LIBRARY

Committee Minutes Available...The Library microfiche copies of committee minutes from the 1995 Legislative Session are now available, with the exception of the Senate Natural Resources Committee minutes. The cost for the set of approximately 180 microfiche is \$35. Orders may be sent to the Montana Legislative Library, Legislative Services Division, PO Box 201706, Helena, MT 59620-1706 or faxed to 406/444-2588. Original minutes and tapes are available for review at the Historical Society Archives (225 N. Roberts, Helena, MT 59620-1201 406/444-4775), and copies of the minutes are available at the State Law Library (215 N. Sanders, Helena, MT 59620-3004).

If you have questions, please call the Legislative Library at (406)444-3064.

JUVENILE JUSTICE AND MENTAL HEALTH STUDY COMMISSION

Commission Meets in Helena...The Juvenile Justice and Mental Health Study Commission held its fourth meeting on February 12 and 13 in Helena. The Commission heard reports from the Attorney General's Juvenile Violence Task Force and the Oversight Committee on Children and Families. The Commission also heard from representatives of the

Montana Youth Alternatives program, the Montana Sex Offender Treatment Association, and the Montana Conservation Corps. Presentations on school safety teams and violence and on special education funding were made to the Commission.

Shannon Wilbur of the Youth Law Center in San Francisco presented testimony on constitutional issues for juveniles. Provider testimony included members of the state Special Education Advisory Council, the Project for Alternate Learning and Southwest Adolescent Treatment Center in Helena, mental health managed care, and Lewis and Clark County Juvenile Probation.

The subcommittees continued their work and will report to the full Commission after a brief work session at the next meeting.

Commission to Meet in Great Falls...The Commission will hold its fifth meeting on April 15 and 16 in Great Falls, fulfilling the mandate to meet in each of the five mental health regions. The meeting will include a Commission work session on Monday at which the three subcommittees will present their preliminary findings and recommendations to the whole Commission. This will give the members an opportunity to identify additional information needs and potential gaps in their work to date. The public hearing will be held Monday night. On Tuesday, the Commission will tour the Youth Services Center, take testimony from service providers, hear a presentation from Mike Ferriter of the Department of Corrections and member of the Commission, and hold another work session.

Future meetings will be in July in Missoula and an end-of-interim meeting in Helena in September.

REVENUE OVERSIGHT COMMITTEE

Committee Hears From DOR...The Revenue Oversight Committee met February 1 and 2 in Helena. Thursday afternoon, the Department of Revenue presented an assessment of its current information technology and identified problems and opportunities for improving the technology. Jeff Miller, Administrator, Income Tax Division, told the Committee that the tax system is the largest information and data management system in Montana. However, that system was developed in the 1970s and 1980s and is rapidly becoming obsolete. The system currently has about 870 programs for the primary tax systems. Even minor modifications to tax law may require significant reprogramming. Mr. Miller said that the Department needs to develop an information system that is both adaptable to change and manageable in the future. An integrated system would

virtually pay for itself through increased efficiencies at all levels of operation.

Mick Robinson, Director, Department of Revenue, discussed the Department's goals for the development of a geographical information system (GIS) for parcel based mapping. Parcel based mapping is the starting point for virtually all other GIS applications. A uniform data base would not only improve the Department's reappraisal function but would be used by a wide variety of private and public interests. Representatives from several state agencies, registered land surveyors, the Montana Association of Realtors, and U.S. West all spoke in favor for the development of a uniform system. Following the presentations, the Committee experimented with the property valuation systems used by the Department.

Committee Considers Motor Vehicle Taxation...During the 1995 Legislative Session, the Montana Legislature considered House Bill No. 363, a measure that would have revised the taxation of motor vehicles. The bill was the result of the efforts of an advisory committee appointed to look at ways of simplifying motor vehicle taxes. Although the bill passed the House of Representatives, it was tabled in the Senate Taxation Committee. The Senate Committee concluded that the issue of motor vehicle taxation required additional study and suggested that the issue should be addressed by the Revenue Oversight Committee. At its November 17, 1995, meeting, the Committee decided that motor vehicle taxation should be one of its policy priorities.

In early January 1996, Committee staff asked several individuals and motor vehicle associations to assist the Committee in its consideration of motor vehicle taxation. This "motor vehicle taxation group" includes employees of the Departments of Revenue, Justice, and Transportation as well as a representative from the Montana Automobile Dealers Association and representatives of the trucking industry. The group is informally divided into a project team and an advisory group. Based on a study plan presented to the Committee at the February 2 meeting, the project team will be involved in data collection and analysis and, in conjunction with the advisory group, the development of policy options for presentation to the Committee.

Committee Reviews Beneficial Use Tax on Ski Areas...At its November 17, 1995, meeting, Senator Mike Foster requested that the Revenue Oversight Committee review the applicability of the beneficial use tax to ski areas located on public lands. At that time, Mick Robinson told the Committee that the Department had met with the Montana Ski Area Association to discuss whether ski areas on public lands are subject to the beneficial use tax. In a letter to a ski area operator, a private attorney concluded that "a strong argument can be made that a use of public lands by a ski area operator must be exclusive before the "beneficial use" tax may be legally imposed on that use". A

memorandum opinion prepared by the Department of Revenue in response to that letter took the opposite view and maintained that "A person may be subject to taxation under the beneficial use tax for his use of public property for industrial, trade, or other business purposes even when that person does not have the 'exclusive use' of the property."

Jeff Martin, Committee staff, discussed the history of the beneficial use tax in Montana and summarized similar taxes in other states as they apply to ski areas. A beneficial use tax is a tax imposed on a taxable entity for the profit, benefit, or advantage derived from the use of property that is otherwise exempt from property taxation. In Montana, the tax was enacted during the 1969 legislative session. In 1983, the Montana Legislature enacted legislation to clarify that the Colstrip power companies were subject to the beneficial use tax for the transmission of electricity along the Bonneville Power Administration (BPA) 500 kv transmission lines from Townsend west to the Taft substation on the Montana-Idaho border. The tax was challenged by the power companies, but it was upheld by the Montana Supreme Court. There are few exemptions from the beneficial use tax, and those exemptions apply to specific types of property. In addition, exclusive use is required only for mineral, timber, and grazing leases or for certain port authorities before the tax may be applied. Colorado, Utah, and Washington impose some form of a beneficial use tax on ski areas operated on federal land, while Idaho and Wyoming do not.

Lee Heiman, Committee legal advisor, concluded that under Montana law, a ski area with a contractual right to use federal property would be subject to the beneficial use tax. The amount of the tax would be based on the value of the use that is established through the terms of the contract. Pat Melby, an attorney representing the Montana Ski Areas Association, generally agreed with Mr. Heiman's analysis, but he disputed the Department's intention to impose the tax on the full value of land leased by a ski area. In order to do this, the ski area would have to have exclusive use of the property. However, forest service permits specify that the land may be used for other purposes.

The Committee asked whether an exemption for ski areas from the beneficial use tax would jeopardize the tax on the beneficial use of the BPA power lines. Mr. Heiman and David Woodgerd, Chief Legal Counsel, Department of Revenue, did not believe an exemption for ski areas would necessarily impair the tax. But if exemptions are continually allowed, the tax may become discriminatory. Mr. Robinson said that the Department believes ski areas are subject to the tax but that it would not impose the tax until the issue has been evaluated in cooperation with the ski areas and until the Legislature has had an opportunity to consider the issue. The Committee decided to postpone action pending further discussions between the Department and the ski area association.

Dual Taxation on the Crow Reservation...At the request of Representatives Judy Murdock (House District 6) and Lila Taylor (House

District 5), the Committee a provided a forum to discuss the issues of dual taxation on the Crow Indian Reservation. Rep. Murdock explained that in response to cuts in federal funding, the Crow Tribe has imposed several new taxes. Denis Adams, Tribal Tax Commissioner, described the taxes imposed by the Crow Tribe: coal severance and coal gross proceeds taxes, rail car tax, utility tax, and resort tax. The rail car tax is patterned after the state rail car tax, and the resort tax is patterned after the state lodging facility tax and the local option resort tax. There are no revenue sharing agreements between the Crow Tribe and the state. Tax ordinances enacted by the tribal council must be approved by the U.S. Department of Interior. Several tribal members spoke on the Tribe's need to impose taxes to provide services. Arlo Dawes, Crow Tribal member, pointed out that federal courts have held that Indian tribes have inherent authority to impose taxes on Indians and non-Indians doing business on the reservation.

Several businesses questioned the structure of the taxes and wondered whether the Tribe had the authority to impose taxes on businesses located on private fee land within the boundaries of the Reservation. Tim Gregori, General Manager, Big Horn County Electric, said that the tax is paid by customers living both on and outside the Reservation. The cooperative was sued in tribal court when it attempted to pass the tax on to tribal customers. Several business owners have refused to collect the resort tax. Rod Svee, Superintendent of Schools, Hardin, reported on the impact of dual taxation on Hardin school districts.

Committee Considers Other Business...Don Hoffman, Chief, Natural Resources Bureau, reported on an agreement to share tax revenue from oil and natural gas produced on the Blackfeet Indian Reservation. The agreement ends the dual taxation of oil and natural gas on the Reservation. Mr. Hoffman said the agreement was so well received that it may serve as a model for other state-tribal tax agreements in Montana as well as in other states. The Montana Coal Board reported on its recent activity related to the development of an underground coal mine in the Bull Mountains.

Committee to Meet on March 29...The Committee is scheduled to meet March 29, at 9 a.m., in Room 104 of the Capitol.

SUBCOMMITTEE ON A STATE-CHARTERED FOREIGN INVESTMENT DEPOSITORY

Subcommittee Postpones Meeting...The Subcommittee on a State-Chartered Foreign Investment Depository has postponed its March 8 meeting until March 27-28. The Subcommittee will meet in Room 437 of the State Capitol in Helena. Unless the members seek permission from the Legislative Council to extend the duration of the study period, this will be the Subcommittee's last meeting.

Subcommittee to Discuss Proposed Enabling Legislation...The major focus of discussion at the meeting will be a detailed outline of enabling legislation for the proposed financial institution. According to experts in private and offshore banking, some degree of relative privacy, protection from foreign civil judgments, and profit potential are essential to the competitiveness and commercial viability of the depository. Postponing the meeting will allow a more thorough analysis and presentation of each component.

Other Issues to Be Discussed...Other items on the agenda include such lingering and closely associated issues as:

- state liability in the event that a chartered depository fails;
- provisions for private deposit insurance;
- escheatment (abandoned property and assets) as a revenue source; and
- the roles and concerns of state and local law enforcement agencies.

The meeting may also feature presentations on the advent of "cryptocurrency" in international banking and a question and answer session on precious metals markets and the linking of foreign depositors to platinum bullion produced in Montana.

There will be an opportunity for public comment during the meeting.

For further information, contact Stephen Maly, Legislative Services Division, (406)444-3064.

COMMITTEE ON INDIAN AFFAIRS

Committee to Meet in March...The Committee on Indian Affairs will meet on March 28 in Room 104 of the State Capitol, beginning at 10 a.m. The Committee will hear reports from the various state agencies involved in negotiations with the various Indian tribes in Montana. Staff will update the Committee on the status of the SJR 11 study concerning compliance with Article X, section 1(2), of the Montana Constitution.

The Little Shell Tribe has requested time on the agenda to make a presentation to the Committee. The Little Shell Tribe is currently seeking recognition from the federal government.

Committee to Travel to Fort Peck...The Fort Peck Tribes have invited the Committee to visit the Fort Peck Reservation in late spring. Committee staff is currently working with tribal officials in making arrangements for the visit. This will be the third visit the Committee has made to an Indian reservation. The Committee visited the Fort Belknap Reservation in August 1994 and the Crow Reservation in November 1995. The Committee hopes to visit a fourth reservation before the end of this interim.

For more information on the March 28 meeting, please contact Connie Erickson, Legislative Services Division, (406)444-3064.

LEGISLATIVE AUDIT COMMITTEE

Audit Committee Meets...The Legislative Audit Committee met February 9 in Room 104 of the Capitol Building. The following reports were presented:

FINANCIAL-COMPLIANCE AUDITS:

Department of Social and Rehabilitation Services (95-10)

This report contains 14 recommendations to the Department of Public Health and Human Services. An unqualified opinion was issued on the financial schedules presented in the report. Major issues addressed in this report include: collection of \$1.2 million in prescription drug rebates; cost savings related to the Refugee Resettlement program and the Montana Automated Child Care System; improving controls over \$190 million in food stamps; quality of care in the Medicaid Personal Care Services program; reducing

administrative costs for the Montana Telecommunications Access program; and reconciling Special Revenue Fund balances.

Department of Family Services (95-14)

This report contains 26 recommendations to the Department of Public Health and Human Services. An adverse opinion was issued on the financial schedules presented in the report. Major issues addressed in this report include: improving cash management to reduce interest loss to the state general fund; preventing overexpenditure of authority in general fund appropriations; reconciling special revenue fund balances; recording transactions in the proper fund; recovering additional federal support for foster care; collecting past due accounts; and implementing procedures to increase the accuracy of foster care eligibility determination.

The University of Montana: College of Technology, Missoula; Division of Technology, Montana Tech; Helena College of Technology (95-24, 26, 27)

These audits resulted in unqualified opinions on the financial schedules for the 2 fiscal years ending June 30, 1995. The combined report contains three recommendations to the colleges. One recommendation is directed to the Division of Technology, Montana Tech, and two are to the Helena College of Technology. The recommendations address uncollectible student loans and ensuring that financial activity is properly recorded on SBAS.

Public Employees' Retirement Division, Department of Administration (95-30)

The Division's 1995 annual report contains the independent auditor's reports on the financial statements of each of the seven retirement systems and the pension plan administered by the division. The Judges' Retirement System (JRS) opinion is qualified because of a constitutional issue regarding actuarial funding. Users of the JRS financial statements should use caution when analyzing the information contained in those statements. The other seven opinions are unqualified, and users may rely on the information presented.

Department of Transportation (95-13)

This report contains 13 recommendations to the Department. An unqualified opinion was issued on the financial schedules presented in the report. Major issues contained in the report relate to bid letting policies and procedures; public participation in meetings; controls over license and permit sales; and repaying \$110,000 to the state general fund. The Department has implemented 11 and partially implemented 2 of the audit recommendations contained in the prior audit report.

PERFORMANCE AUDIT:

Vehicle Fleet Management (94P-43)

This performance audit presents information on management of the state of Montana's vehicle fleet. Over 3,000 vehicles of 1 ton or less are owned or leased by 47 state entities. Audit work indicates that the state has a varied approach to vehicle use and care based on decisions made by individual employees. The state is not realizing any efficiency from combined policies or communication of "best practices". The audit recommends that the Department of Administration work with state agencies to develop and distribute "best practices" for procurement, use and control, maintenance, disposal, and inventory.

ELECTRONIC DATA PROCESSING AUDIT:

System for the Enforcement and Recovery of Child Support, Department of Public Health and Human Services (95DP-04)

This is an EDP general and application controls audit of the Department of Public Health and Human Services' SEARCHS computerized application. The report contains 11 recommendations. These recommendations address improving electronic access controls, establishing statewide policies and procedures to improve case management, and establishing formal contingency procedures.

Committee to Meet in March... The next meeting of the Legislative Audit Committee is scheduled for March 29 in Room 108 of the Capitol.

ENVIRONMENTAL QUALITY COUNCIL

EQC and Subcommittees Meet in February... During the last 2 weeks of February, the Environmental Quality Council and its appointed subcommittees held meetings in Helena. The following is a summary of each meeting and subsequent Council actions.

House Bill 412 Environmental Self-Audit Working Group... As a part of its HJR 10 Enforcement and Compliance Study, the EQC is studying the environmental self audit issues that were raised in House Bill 412 during the 1995 Legislative Session. A meeting of interested and affected parties was held on Thursday, February 15. The purpose of the meeting was to determine whether there were any areas of agreement among the

parties with regard to environmental self-auditing. The working group asked the staff to do the following:

- analyze the feasibility of applying the EPA policy on environmental self-auditing at the state level;
- provide options on mitigated penalty/immunity provisions; and
- provide options for limited protection for documentation.

The working group will meet again on April 10 to discuss these issues.

Enforcement and Compliance Subcommittee...On February 21, the Subcommittee heard presentations on the status of compliance and enforcement programs within the Oil and Gas Conservation Division of the Department of Natural Resources and Conservation. The Subcommittee also heard from the Department of Agriculture and the Department of Environmental Quality's Air Quality Division. The next Enforcement and Compliance Subcommittee meeting is scheduled for March 20 and 21 in Room 104 of the Capitol.

Montana Environmental Policy Act (MEPA) Implementation Subcommittee...On February 21, the EQC MEPA Subcommittee heard updates on state agency implementation of private property right considerations into the Montana Environmental Policy Act; recent Montana Supreme Court MEPA case law; EQC MEPA implementation training; and criteria for the George Darrow MEPA award. The next MEPA Subcommittee meeting is scheduled for April 25.

Full Council Meets...The Council met on February 22 and heard updates from the Montana Environmental Policy Act Implementation Subcommittee and the HJR 10 Enforcement and Compliance Subcommittee. The Council also received a number of other updates, including the progress of the Senate Bill 382 joint and several liability study; the status of the EQC indicators project; the current status of the water quality initiative; the Pony mine cleanup situation; the status of Montana's water data system; and the progress of the Major Facility Siting Act collaborative process.

Council Takes Action...The Council established a subcommittee to develop environmental indicators. The Council also asked the staff to develop and produce an easy-to-understand guide to Montana's water quality laws.

The next EQC meeting is scheduled for April 26.

For more information on these issues, please contact the EQC staff at (406)444-3742.

LEGISLATIVE FINANCE COMMITTEE

Committee to Meet on March 14 and 15...The Legislative Finance Committee (LFC) will meet on March 14 and 15 in Room 104 of the Capitol. The tentative agenda includes the following:

Thursday, March 14, 1 p.m.

- status of state general fund revenues;
- Resource Indemnity Trust (RIT) funding analysis;
- review of services provided by the Legislative Services Division;
- development of a new budget management system;
- mental health managed care RFP - subcommittee report;
- SJR 23 Task Force update; and
- Legislative Branch reorganization update.

Friday, March 15, 8 a.m.

- update on potential impacts of federal budget reductions;
- recidivism comparisons - community corrections and MSP;
- legislative appropriations policy issue: conflicting philosophy;
- proposed reorganization structure - DNRC/DEQ;
- fiscal biennial comparison methodology - legislative budget process discussion (1 p.m.);
- privatization update: Executive Branch initiatives;
- HJR 48: information technology - privacy and access issues; and
- budget amendments summary report.

Legislative Budget Process Discussion...Included on the meeting agenda for Friday, March 15, at 1 p.m. will be a discussion of the legislative budget process, including issues of budget development methodology, legislative procedure, and budget data requirements. A number of legislators have expressed an interest in exploring options to improve the budget decision process and are encouraged to attend and participate.

Subcommittee to Meet...The SB 378 Subcommittee of the LFC, assigned to review statutory appropriations and state special revenue accounts, is scheduled to meet March 13 at 8 a.m. in Room 108 of the Capitol. The Subcommittee will be updated on the elimination of accounts and transfer of account balances to the general fund as effected

by Senate Bill 83 in the 1995 Session. The Subcommittee will also hear about the progress of the Department of Administration's survey of state special revenue accounts.

The Subcommittee will spend most of the day reviewing and formulating recommendations on the existing 98 statutory appropriations. Once completed, these recommendations will be reported to the LFC for final consideration and action.

Subcommittee Established...The LFC established a subcommittee at its December meeting to propose a meaningful budget comparison methodology. The state budget is complex, and the methods used to compute the comparisons have varied considerably over the years, creating confusion over the size of the budget and budget trends. The Subcommittee has been tasked to develop a recommendation for budget comparisons that addresses:

- what should be measured;
- what will be compared;
- what measurement standards will be used for valuing budget components; and
- issues of fairness and balance of the comparison method.

The Subcommittee will meet for the first time on Thursday, March 14, at 8 a.m. in Room 104.

POSTSECONDARY EDUCATION POLICY AND BUDGET COMMITTEE

Committee to Meet in April...The Postsecondary Education Policy and Budget Committee will meet April 15 in Room 104 of the State Capitol. The agenda will include discussions on student financial aid and performance indicators/outcome assessment for the Montana University System.

THE BACK PAGE

Despite general consensus on the need for comprehensive tax reform, actual changes in state and local tax policy until recently have often been difficult to achieve not only in Montana, but in other states as well. Sluggish economic growth during the first years of the 1990s prevented many states from instituting major tax reform. Major shortfalls in state and local revenue and razor-thin state balances resulted in relatively large tax increases nationwide in 1990 and 1991 and in smaller tax increases between 1992 and 1994. Disagreement about what constitutes tax reform, such as tax fairness versus economic development, is another obstacle to tax reform. Despite these difficulties in initiating tax reform, 1995 saw a net reduction in state taxes nationwide for the first time since 1985.

The National Conference of State Legislatures (NCSL) annually reports on state tax actions. This edition of "The Back Page" highlights NCSL's most recent findings for selected states. It is based on a report by Scott Mackey, "State Tax Actions 1995", in State Tax Notes, Vol. 10, No. 6, February 5, 1996, pp. 417-447.

SUMMARY OF SELECTED STATE TAX ACTIONS

Compiled by Jeff Martin, Research Analyst
Legislative Services Division

INTRODUCTION

In 1995, the economic outlook for the states was much better than it had been just a few years earlier. As Scott Mackey points out:

Most states began calendar year 1995 with vigorous economic growth, strong revenue performance, higher reserves, and healthy balance sheets. Strong state fiscal conditions in 1995 helped state leaders make good on promises to reduce taxes in 1995 legislative sessions.

As a result, states were able to reduce taxes on net by \$1.2 billion, or by about -0.3% of prior year collections. These reductions were actually less than anticipated because of uncertainty of Congressional actions related to the federal budget deficit. In addition, there is concern in the states that revenue growth will return to more modest levels. These concerns are reflected in the level of tax reductions adopted by the states. Based on tax changes as a percentage of previous year collections, Mackey identified only two states (Oregon and New

Hampshire) in 1995 that had major decreases of 5% or more and only nine states (Arizona, Delaware, Michigan, Montana, New Jersey, North Carolina, Pennsylvania, Utah, and Washington) that had "significant" decreases of 1% to 4.9%. Six states (Hawaii, Illinois, Rhode Island, South Dakota, Tennessee, and Vermont) increased taxes by 1% or more. The remaining states had no significant increases or decreases in taxes. Some of these states were not in session in 1995.

The balance of this article highlights the major tax changes that were enacted by states in the Far West, the Rocky Mountains, and the Southwest.

FAR WEST

The Far West Region includes Alaska, California, Hawaii, Nevada, Oregon, and Washington. The Oregon Constitution requires that individual and corporation taxpayers must receive a tax rebate when collections exceed the official revenue estimate by 2% or more. As a result of this provision, individual income taxpayers will receive \$155 million in refunds and corporate taxpayers will receive \$158 million. Oregon also reduced the weight ton tax on trucks by 6.2%. On the other hand, Oregon increased its cigarette tax by 10 cents a pack.

Washington's governor vetoed a number of tax cuts in 1995, but taxpayers will receive a one-time statewide property tax rebate. Coupled with a sales tax exemption for manufacturing machinery, taxpayers in Washington received a \$103 million tax cut as the result of 1995 actions. However, Washington had previously approved an increase in the cigarette tax from 56.5 cents a pack to 81.5 cents a pack. The increase was effective July 1, 1995.

In California, a temporary income tax hike was allowed to expire. The state's top marginal tax rate fell from 11% to 9.3%. Hawaii was the only state in the region to increase taxes. Individual income tax collections will increase by \$65 million as a result of the repeal of or reduction in certain income tax credits.

ROCKY MOUNTAIN

The Rocky Mountain Region includes Colorado, Idaho, Montana, Utah, and Wyoming. Strong economic performance in the Rocky Mountain Region allowed Montana and Utah to adopt tax cuts. Montana provided a one-time income tax rebate of \$16.3 million. In addition, individual income taxpayers may deduct one-half of medical insurance premiums. Contributions to and allowable withdrawals from a medical care savings

account are not included in Montana adjusted gross income. The total individual income tax cut amounts to \$18.5 million. Combined with reductions in personal property taxes and energy taxes of \$12.8 million, the total tax decrease for Montana in fiscal year 1996 is approximately \$31.3 million. However, this amount is offset by \$4.8 million in accelerated tax payments, primarily from the local government severance tax. The total tax decrease does not include the property tax payment to residential property owners whose taxable value increased by at least 15%.

Utah reduced property taxes by \$90 million. Colorado, Idaho, and Wyoming did not report any major tax law changes in 1995. Idaho did, however, assume greater state responsibility for public schools, thus indirectly providing property tax relief. Increased state support for public schools may not be sustainable without a statewide tax increase.

SOUTHWEST

The Southwest Region includes Arizona, New Mexico, Oklahoma, and Texas. Arizona reduced its top marginal income tax rate from 6.9% to 5.6% and reduced the lowest marginal tax rate from 3.25% to 3%. The state also increased the standard deduction and provided a \$30 credit per exemption that mostly benefits low- and middle-income families. Finally, Arizona cut property taxes for commercial, agricultural, mining, and utility property. In November 1994, Arizona voters approved a tax hike on cigarettes from 18 cents a pack to 58 cents a pack. The higher tax results in a \$96 million increase in fiscal year 1996. This offsetting tax increase results in a net tax decrease of \$104 million.

New Mexico reduced its motor fuel tax from 20 cents a gallon to 17 cents a gallon for a \$25 million tax cut. Oklahoma and Texas reported no major tax changes.

CONCLUDING OBSERVATION

The state tax actions described above do not necessarily indicate a major trend in tax reform. The tax rebate programs in Montana, Oregon, and Washington are, most likely, one-time events. On the other hand, the property tax reductions in Montana and Utah represent long-term tax relief. The most broadbased activity occurred in Arizona, where individual and business taxes were reduced. Tax cuts by themselves do not always represent tax reform. The real test of tax reform is a tax system based on revenue stability, equity, economic efficiency, and simplicity. One thing is clear, however--taxpayers in many states are better off this year than they were last year.



INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED.
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

MARCH

March 13, LFC Subcommittee on SB 378, Room 108, 8 a.m.

March 14, LFC Subcommittee on Budget Comparisons, Room 104,
8 a.m.

March 14, Legislative Finance Committee, Room 104, 1 p.m.

March 15, Legislative Finance Committee, Room 104, 8 a.m.

March 20 and 21, EQC Enforcement/Compliance Subcommittee, Room
104

March 21 and 22, Gaming Advisory Council, Room 325, 9 a.m.

March 27 and 28, Subcommittee on a State-Chartered Foreign
Investment Depository, Room 437

March 28, Committee on Indian Affairs, Room 104, 10 a.m.

March 29, Legislative Audit Committee, Room 108

March 29, Revenue Oversight Committee, Room 104, 9 a.m.

APRIL

April 1, Legislative Council Personnel Subcommittee, Room 104,
9 a.m.

April 10, EQC Environmental Self-Audit Group, Helena

April 10 and 11, Oversight Committee on Children and Families, Room 104, 9 a.m.

April 12, Legislative Council (tentative)

April 15, Committee on Postsecondary Education Policy and Budget, Room 104

April 15 and 16, Juvenile Justice and Mental Health Study Commission, Great Falls

April 18 and 19, Committee on State Management Systems, Room 437, 9 a.m.

April 25, EQC Enforcement/Compliance Subcommittee, Helena

April 25, EQC MEPA Subcommittee, Helena

April 26, Environmental Quality Council, Helena

MAY

May 3, 4, and 5, Montana Legislative Conference on Higher Education, Yellow Bay, Flathead Lake

May 16, Subcommittee on Veterans' Needs, Eastern Montana Veterans' Home, Glendive

May 23 and 24, EQC Enforcement/Compliance Subcommittee, Helena

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